



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAROK**

**CRIMINAL REVISION NO. 22 OF 2018**

**REPUBLIC.....APPLICANT**

**-VERSUS-**

**ALFRED SIGEI.....RESPONDENT**

*(From the original conviction and sentence dated 6<sup>th</sup> March 2018 in the Chief Magistrates Court*

*at Narok in Criminal Case No. 309 of 2018, Republic V. Alfred Sigei.*

**ORDER ON REVISION**

1. The respondent was convicted and sentenced on his own plea of guilty to a fine of shs.80,000/= in default to serve six (6) months imprisonment by the resident magistrate in respect of being found in possession of 25 litres of changaa, contrary to section 27(1) (b) (4) of the Alcoholic Drinks Control Act of 2010. The particulars alleged that the changaa was in a plastic jericana that bore no label as to its contents and it also did not contain any health warning.
2. Pursuant to the provisions of section 363 of Criminal Procedure Code (Cap. 75) Laws of Kenya the chief magistrate has reported this matter to this court for orders on revision. She has pointed out that the trial court (Hon. Sisenda) lacked jurisdiction to take the plea in respect of this offence. The plea of guilty ought to have been taken by a magistrate holding the rank above that of a resident magistrate.
3. In the circumstances, I find that since Hon. Sisenda held the rank of resident magistrate, did not have jurisdiction to take the plea. It therefore follows that her order of convicting the respondent is null and void.
4. After convicting the respondent Hon. Sisenda forwarded the case of the respondent to the chief magistrate (Hon. W. Juma) for sentencing pursuant to section 221(1) of the Criminal Procedure Code. Hon. W. Juma then sentenced the respondent to a fine of shs.80,000/= in default to serve six (6) months imprisonment.
5. The sentence by the chief magistrate was also without jurisdiction, because the order of conviction was recorded by a court which equally lacked jurisdiction.
6. The upshot of the foregoing is that the conviction and order recorded against respondent are hereby quashed.
7. The only issue of consideration is whether I should order for a retrial; in view of the amount of changaa.
8. I find that the respondent has served over six months of his default sentence. The ends of justice have been met and a re-trial is not necessary. If the respondent had paid a fine of shs.80,000/= it should be refunded to him.
9. The upshot of the foregoing is that the respondent is hereby ordered to be set free unless otherwise held on other lawful warrants.

**Order on revision dated this 13<sup>th</sup> day of December, 2018**

**J. M. BWONWONGA**

**JUDGE**

**13/12/2018**